



Presented on	:	03.02.2026
Registered on	:	05.02.2026
Decided on	:	10.07.2026
Duration	:	Y M D
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CNR No.MHCA010000132026

Exh.No.12

THE MAHARASHTRA STATE CO-OPERATIVE APPELLATE COURT,
MUMBAI

(Before Sau. S.S. Sapatnekar, President)

A.O. NO.5 OF 2026

(Arising out of order dated 03/01/2026 passed by Ld Judge, Co-operative Court, below Exh.5 in Dispute No.CC/II/453/2023)

1. Mr. Harshad Dholakia
2. Mrs. Seeta Dholakia
Both Adult, Indian Inhabitants,
R/a- Flat No.402, Shree Mahavir
Cooperative Housing Society Limited,
Plot No.71-A, Jain Derasar Marg,
Santacruz (West), Mumbai 400 054.

... Appellants
(Orig. Disputants)

VERSUS

1. Shree Mahavir Cooperative Housing Society
Limited, having address at-
Plot No.71-A, Jain Derasar Marg,
Santacruz (West), Mumbai 400 054.
2. Mrs. Gauri Dukle
Mr. Gaurav Dukle
Mrs. Asmita Dukle
All adults, Indian Inhabitant,
R/a- Flat No.902, Shree Mahavir
Cooperative Housing Society Limited,
Plot No.71-A, Jain Derasar Marg,
Santacruz (West), Mumbai 400 054.

... Respondents
(Orig. Opponents)

Shri M.S. Prabhune, Advocate for Appellants.
Ms Devki Govekar, Advocate for Respondent No.2.

J U D G M E N T(10th July, 2026)

1) This appeal takes an exception to the order passed by the Co-operative Court No.2, Mumbai below application for getting interim relief at Exh.5 dated 03/01/2026 in dispute No.453/2023, whereby the Ld Co-operative Court has rejected the said application. The original disputants are the appellants and original opponents are the respondents. For the sake of convenience, parties are hereinafter referred to by their original status in the dispute as disputants and opponents.

2) In brief the facts of the case are as follows :

Disputants are member of opponent No.1 society which a registered co-operative housing society registered under the Maharashtra Co-operative Societies Act (hereinafter referred to as the MCS Act). The society's office is situated at the address given in the title clause. The opponent No.2 is member of opponent No.1 society.

3) The disputants are holding 5 fully paid-up shares of Rs.50/- each of the opponent No.1 society bearing Nos.46 to 50 under Share Certificate No.8 issued by opponent No.1 society. The society building consists of 9 floors and 18 flats. As per sanctioned plan, the opponent No.1 society has 20 car parkings. 10 in stilt and remaining all are open car parking. The disputants have purchased their Flat No.402 in the year 2007 vide registered sale deed dated 26/12/2007 from Mr. Ramesh Karla who was original member of opponent No.1 society. Said Karla had purchased Flat No.402 from builder.

4) The society was formed in the year 2000 and at that time building of the opponent No.1 society consists of only 7 floors. The managing committee of the society by resolution dated 24/03/2002 has allotted car parking for Flat No.402. Thus, the erstwhile member of the society Mr. Karla was specifically allotted car parking for Flat No.402 and after purchase of the said flat by the disputants, they come in possession of said car parking of Flat No.402.

5) Since the date of purchase, they were parking their car in the parking slot allotted to Flat No.402. On 23/10/2021 the opponent No.2 forcibly and deliberately parked their second car in the parking space allotted to the disputants. Thereafter he started parking his car in the said slot. The society has already allotted one parking space to opponent No.2 for his first car. Despite of it, he started parking his second car in the car parking slot allotted to the disputants. The said act of opponent No.2 is malafide and mischievous which has deprived disputants of their parking slot. Disputants by their letter dated 23/10/2021, 24/10/2021 and 26/10/2021 informed the society about illegal act of opponent No.2 and requested society to take action against opponent No.2. However, society failed to consider and resolve disputants' grievance. Due to inaction on the part of opponent No.1 society, disputants compelled to park their car at inconvenient place.

6) The family of opponent No.2 has purchased flat on 8th and 9th floor. Said floors are constructed subsequently by the society using TDR. The opponent No.2 despite of knowledge of resolution dated 24/03/2002 has

illegally encroached upon disputants' parking slot. Opponent No.2 has filed a suit bearing No.229/2021 against society for directing them to frame a parking policy. The said dispute is still pending. Hence, disputants filed dispute and prayed for various reliefs.

7) During pendency of said dispute, they filed interim application at Exh.5 for getting interim relief. It is prayed by them that during the pendency and final disposal of the dispute, the opponent Nos.1 and 2 be temporarily restrained from obstructing the disputants' use of parking slot for Flat No.402. So also it is prayed that both the respondents be directed to hand over the parking slot of Flat No.402 to the disputants.

8) The opponent No.2 only, filed his say to the interim relief application and resisted it. It appears that opponent No.1 chose not to file any say to the said application. It is alleged that disputants have not produced any document to show that their predecessor in title was allotted a specific parking slot by the society. So also they failed to annex any document to show that they were parking their car in a specific parking slot for 15 years. The disputants are unaware of the fact that a specific parking slot cannot be bought or sold as the parking spaces belong to the co-operative society. The disputants tried to file complaint with local police station on 23/10/2021. However, he failed to produce the proof of any parking slot allotted to them by the society and hence, police refused to intervene in the matter. The disputants failed to produce any office copy of the application filed by them with the managing

committee of the society for allotment of parking slot after purchase of the flat in the year 2007. So also they failed to produce the copy of their sale deed. The dispute is nothing but an attempt to create hurdles in allotment of parking slots as per the byelaws, by claiming ownership over particular parking slot on the basis of the allotment done 22 years ago, and that too, in the name of predecessor in title. The allotment of parking done in 2002 does not mention the name of either disputants or opponent No.2. The disputants seem to be under impression that allotment of parking once done by the society remains in force in perpetuity. It was the duty of the disputants to apply for a parking slot after they had purchased Flat No.402 in 2007. No allotment of the parking slot is done by the opponent society by following the byelaws till date. The dispute is filed after delay of two years. And on these grounds, he prayed to dismiss the appeal.

9) The Ld Trial Judge after hearing the parties rejected the interim relief application and said order is impugned in the present appeal.

10) In the appeal memo, it is alleged that appellants being the transferee members of the society has stepped into the shoes of their predecessor in title in respect of Flat No.402. They are entitled to all rights, privileges and benefits attached to the said flat including parking slot. The Trial Court wrongly observed that appellants are required to apply afresh to the society for allotment of car parking. The Trial Court has erred in drawing the adverse inference against the appellants for non-production of registered sale deed at

the interim stage. The Trial Court has wrongly held that prima-facie case, balance of convenience does not lie in favour of appellants. The non-production of the sale deed at interim stage would not have been treated as fatal to the appellants' claim.

11) It is also alleged that the predecessor in title of the disputants were in exclusive open and uninterrupted use of the parking space for more than 15 years. The respondent No.2 has already allotted one parking slot for his first car by the society and he is unlawfully parking his second car in the parking slot of Flat No.402. The Ld Judge failed to consider that interim relief is necessary to preserve the status-quo ante. Neither society nor respondent No.2 or any other member took any objection to the parking slot of disputants for about 15 years. On these grounds disputants prayed to allow the appeal and to grant the interim relief as prayed.

12) Following points arise for my consideration and my findings with reasons thereto are as under :-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Does prima-facie case lie in favour of disputant/appellant ?	... In the negative
2.	Does balance of convenience lie in favour of disputant/appellant	... In the negative
3.	To whom irreparable loss will be caused if injunction is granted as prayed ?	... Does not survive
4.	Whether interference is called for into the impugned order of the Ld Trial Judge ?	... In the negative
5.	What order ?	... As per final order

REASONS

13) Heard the Ld Advocates for the appellants/disputants. The Ld Advocates for respondents remained absent.

14) The Ld Advocate for the disputants submitted that the society is having more car parking spaces and less members. There are 18 members of the society and 20 car parking spaces are available in the society. The disputants have purchased the Flat No.402 from the original member of the society namely Mr. Ramesh Karla vide sale deed dated 26/12/2007 and became the member of the society on 31/07/2008. The society has allotted one car parking to Mr. Ramesh Karla vide resolution for his Flat No.402 and after purchase of the said flat, said car parking is being used by disputants. The opponent No.2 has allotted a car parking No.902 by the society for his first car but now he has forcibly encroached on the car parking slot of Flat No.402 and parking his second car there. Since 2008 till October, 2021 the disputants are using the parking slot of Flat No.402. Due to the illegal act of opponent No.2, dispute is filed and he prayed to grant the interim relief as prayed by allowing the appeal.

15) Per contra, the Ld Advocate for opponent No.2 submitted that disputants are claiming right over parking spot. He pointed out the resolution passed by the society in the year 2002 and argued that no specific location, number of parking slot for Flat No.402 is described in the said resolution. He referred Byelaw No.77(b) and 82 of Model Byelaws. He submitted that a

member has no right to transfer or sell the parking slot. The disputants has failed to produce on record the office copy of the application submitted by him for allotment of a parking slot. So also, sale deed is not produced by the disputants. No parking slot in fact was allotted to the disputants by the society. He supported the lower Court's order. According to the disputants the cause of action arose on 23/10/2021. However, the dispute is filed on 10/11/2023. The disputants have not explained the delay and hence, they are not entitled for any equitable relief. He prayed to dismiss the appeal.

As to Point Nos.1 to 3 :

16) The scope of appeal against the order passed by the Trial Judge below interim relief application is very limited. If the Trial Court has exercised its discretion judiciously, then interference in the said order is not called for. Hence, it is necessary to see whether the Ld Trial Court has exercised its discretion judiciously while partly allowing the temporary injunction application filed by the disputant.

17) Before considering the disputed fact, I would like to mention the admitted facts of the case. Disputants and opponent No.2 are members of the opponent No.1 society. The disputants are owner of Flat No.402 which they have purchased from original member of the society Shri Ramesh Karla on 26/12/2007. The society by resolution passed in managing committee meeting dated 24/03/2002 allotted a parking slot in the society building and compound to the predecessor in title of disputants.

18) At this juncture, it is necessary to quote the Byelaw No.78 and 82-

78 (a) The society shall in the General Body Meeting frame and adopt Parking Rules to regulate the Parking Slots, in accordance with the Act and Rules thereunder.

(b) The allotment of Parking Space shall be made by the Committee on the basis of "First Come First Served", for available parking slots. However, the Member shall have no right to sell or transfer the parking slot allotted by the Society.

(c) No member may be entitled to utilise more parking spaces than what is allotted to him by the Committee or which he has purchased.

82. The Member, desiring to have parking slots, may make an application to the Secretary of the Society giving necessary details. The procedure laid down under the Bye-law No.63 for disposal of applications, shall be followed by the Secretary and the Committee of the Society."

As per Byelaw No.78(b), the allotment of the parking space is the prime responsibility of managing committee of the society and a member shall have no right to sell or transfer the parking slot allotted by society. Hence, the predecessor in title of disputants namely Mr. Ramesh Karla has no right to sell or transfer the parking slot allotted to him by the society to present disputants and present disputants cannot claim any right over the parking slot allotted by the society to their predecessor in title Mr. Karla.

19) As per Byelaw No.82 the member desiring to have parking slot may make an application to the secretary of the society giving necessary details. The procedure laid down under the Byelaw No.63 for disposal of applications

shall be followed by secretary and the committee of the society. Hence, as per this byelaw, it was necessary for the disputants to file application to the secretary of the society for getting a parking slot after purchase of Flat No.402. However, it appears that the disputants never made such an application to the secretary of the society for getting the parking slot to their flat. In absence of a specific procedure followed by the disputants for getting a parking for their flat, they cannot claim any right, interest over the parking slot of their predecessor in title. If they want to claim the parking slot of their predecessor in title, they should have filed an application with the secretary of society for getting the said parking slot. Admittedly, there is no resolution passed by the society granting a specific parking slot to disputants for their Flat No.402. The disputants cannot claim a specific parking slot to their Flat No.402. As such, prima-facie case and balance of convenience does not lie in their favour.

20) As regards the hardship is concerned, according to them, the opponent No.2 is forcibly parking his car in the parking slot allotted to Flat No.402. However, as already pointed out, the disputants cannot claim the parking slot allotted to their predecessor in title by the society as of right. Hence, they have no authority to question the act of opponent No.2. At the most, the disputants can move the secretary of the society for allotment of a parking space to them. Hence, if injunction is not granted, no irreparable loss will be caused to the disputants. Accordingly, I answer said point as does not survive.

21) It is well settled rule of law that delay defeats equity. It is alleged by the disputants that on 23/10/2021 the opponent No.2 forcibly and deliberately parked his second car in the parking slot allotted to disputants. The dispute is filed on 06/11/2023. It means that after the delay of two years from the cause of action, dispute is filed. The said delay is not explained by the disputants and hence, from this angle also, they are not entitled to claim the equitable relief.

22) In the dispute, the disputants have sought relief of mandatory injunction for directing opponent Nos.1 and 2 for handing over car parking space of Flat No.402 to the disputants. In the interim application also, they have sought the same relief. It is well settled rule of law that temporary mandatory injunctions are to be granted rarely. If at the interim stage, the relief of mandatory injunction is granted, then it would amount to granting the main relief at interim stage. Hence, the disputants are not entitled to get any interim relief as prayed.

As to Point No.4 :-

23) The Ld Trial Court has rightly exercised her discretion while refusing to grant the interim relief to disputants. Hence, no interference is called in the said discretion. Hence, I answer Point No.4 in the negative.

24) As a result, I proceed to pass following order :-

ORDER

1. Appeal is dismissed with costs.

2. The order passed by the Ld Trial Judge, Co-operative Court No.2, Mumbai dated 03/01/2026 below application for getting interim relief filed by the disputants at Exh.5 in Dispute No.CC/II/453/ 2023 is hereby confirmed.

SUPRIYA
SHRIRANG
SAPATANEKAR

Digitally signed by SUPRIYA SHRIRANG SAPATANEKAR
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(Sau. S.S. Sapatnekar)

President,

Mh.State Co-operative Appellate Court,
Mumbai

Mumbai
10th July, 2026

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED
JUDGMENT /ORDER.”

10.07.2026
UPLOAD DATE

(D.D. Desai)
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	Sau S.S. Sapatnekar (C.R. No.1) President
Date of pronouncement of Judgment/Order	10.07.2026
Order signed by P.O. on	10.07.2026
Order uploaded on	10.07.2026